

Important information regarding recent overtime litigation in the U.S. District Court of Eastern District of Texas.

## **Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations Under the Fair Labor Standards Act (FLSA)**

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) for employees in the computer field under Sections 13(a)(1) and 13(a)(17) of the [FLSA](#) and Regulations [29 CFR Part 541](#).

The FLSA requires that most employees in the United States be paid at least the [Federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) and Section 13(a)(17) of the FLSA provide an exemption from both [minimum wage](#) and [overtime pay](#) for computer systems analysts, computer programmers, software engineers, and other similarly skilled workers in the computer field who meet certain tests regarding their job duties and who are paid at least \$455 per week on a salary basis or paid on an hourly basis, at a rate not less than \$27.63 an hour.

Job titles do not determine exempt status. In order for this exemption to apply, an employee's specific job duties and compensation must meet all the requirements of the Department's regulations. The specific requirements for the computer employee exemption are summarized below.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

### **Computer Employee Exemption**

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated either on a salary or fee basis at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-

aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.

### **Primary Duty**

“Primary duty” means the principal, main, major or most important duty that the employee performs. Determination of an employee’s primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee’s job as a whole.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at [www.dol.gov/contacts/state\\_of.htm](http://www.dol.gov/contacts/state_of.htm).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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